

12. Among the MDU complexes to which Pacific provides such service are those listed in Exhibit A, hereto.¹ Sommerville and Conzelman are owners or co-owners with others of properties listed in Exhibit A, as indicated therein.

13. Pacific serves each of the MDU complexes listed in Exhibit A and a number of other MDU complexes through multiple points of demarcation, which are the points at which Pacific's network facilities terminate. Pacific's network facilities are cross-connected at the demarcation points to inter- and intra-building cable and other inside wiring, which complete communications paths to individual dwelling units within the MDU complexes.

14. Among the MDU complexes to which GTEC provides such service are those listed in Exhibit B.²

15. GTEC serves each of the MDU complexes listed in Exhibit B and a number of other MDU complexes through multiple points of demarcation, which are the points at which GTEC's network facilities terminate. GTEC's network facilities are cross-connected at the demarcation points to inter- and intra-building cable and other inside wiring, which complete communications paths to individual dwelling units within the MDU complexes.

16. TVMAX has entered into agreements with each of the owners of the properties listed in Exhibits A and B to furnish telecommunications and other services to residents of the properties, either directly or through its affiliate, OpTel. As an inducement to

¹ Exhibit A is being submitted to the Commission with a request that it be placed under seal. However, Exhibit A is being served on Pacific Bell pursuant to a preexisting nondisclosure agreement.

² Exhibit B is being submitted to the Commission with a request that it be placed under seal. However, Exhibit B is being served on GTEC pursuant to a preexisting nondisclosure agreement.

the property owners to enter into such agreements, the agreements include provisions requiring TVMAX to operate and maintain all equipment, wiring, and facilities located on the property that are needed in order to allow such services to be so provided.

17. In order for OpTel or other competitive local carriers ("CLCs") to provide facilities-based services to end users in such MDU complexes, OpTel and other CLCs must have the ability to establish cross-connections to the specific inside wiring that connects to the premises of all end users who may elect to take service from OpTel or other CLCs.

18. OpTel cannot efficiently and economically provide its services to end users in the MDU complexes listed in Exhibits A and B, and certain other MDU properties, because there is no feasible way for it to extend its facilities to the multiple points of demarcation to which the inside wiring at such complexes now terminates. Although it would be possible for OpTel to install its own cabling to each of the points of demarcation, doing so typically would require it to traverse mature landscaping, patio areas, swimming pools, parking lots, or other structures and improvements on the properties at considerable cost to OpTel and with substantial disruption to residents' on-going use of the properties. Moreover, other CLCs desiring to offer their services at the MDU complexes may be required to undertake the very same activities. Such over-building in anticipation of serving some, all, or perhaps none of the residential populations at the MDU complexes is impracticable, cost-prohibitive, and generally is not acceptable to property owners.

19. In order for OpTel and other CLCs to be able to serve such properties, the defendants must reconfigure their existing multiple points of demarcation into single points of demarcation.

20. In furtherance of the purposes of the agreements between TVMAX and the MDU property owners, such agreements provide for the execution of letters of agency authorizing TVMAX, or its agents, to act on behalf of the property owners with respect to all matters concerning the provision of telecommunications services to such properties, specifically including the establishment of single points of demarcation.

21. Pursuant to such agreements and such authority, TVMAX submitted requests at various times to the defendants requesting that they consolidate their points of demarcation at each of the properties shown on Exhibits A and B to a single point.

22. In all cases, the reconfigurations requested by TVMAX have been technically feasible and TVMAX is informed and believes could have been completed easily within 90 days or less of TVMAX's requests. In addition, TVMAX has been and continues to be willing to advance the reasonable costs of the facilities or, if it would be more time- and cost-effective, to perform all or any part of the work itself.

23. GTEC's representatives have advised TVMAX that GTEC would comply with such requests, but GTEC has failed to do so on a reasonable and timely basis. Indeed, GTEC has not yet complied with any of such requests. TVMAX is informed and believes that GTEC will continue to fail to reasonably and timely comply with these requests and similar requests that TVMAX may submit in the future.

24. Pacific, on the other hand, has made varying representations to TVMAX relating to the establishment of single points of demarcation. OpTel raised this issue during its Fall 1997 local interconnection negotiations with Pacific, but, at that time, was advised by Pacific's representatives that Pacific had already established single demarcation points at MDU

complexes and that addressing wiring reconfigurations or, alternatively, access to subloop network elements would be unnecessary.

25. The following year, after TVMAX began establishing relationships with MDU property owners and, through that process, discovered that Pacific's earlier representations were incorrect (i.e., Pacific in fact was serving and continues to serve such properties using multiple points of demarcation), OpTel, on behalf of TVMAX and property owners, met again with Pacific to discuss the procedure for submission of requests and the costs and timeframes associated with reconfiguring Pacific's facilities. At that time, Pacific advised OpTel that it was under no obligation to honor OpTel's requests and would not do so.

26. OpTel and Pacific met a third time in December, 1998, following the issuance of Decision No. 98-12-023 in C.98-02-020, which ordered Pacific to reconfigure demarcation points at a number of MDU properties pursuant to requests made by CoxCom, Inc. At that time, Pacific advised OpTel that it was intending to seek rehearing of Decision No. 98-12-023. However, OpTel was led to believe that so long as OpTel or its affiliate was acting as the agent of the property owners in submitting its requests and that Pacific's establishment of new demarcation points would be subject to any changes in rules or other requirements established in response to Pacific's application for rehearing in C.98-02-020, Pacific would work with OpTel or its affiliate to perform such work on a timely, non-discriminatory basis following the filing of certain tariff changes required by Decision No. 98-12-023.

27. Subsequent to the December, 1998, meeting, Pacific filed changes to its tariff relating to the establishment of demarcation points. However, rather than merely complying with the Commission's order to remove certain provisions that the Commission found to be discriminatory, Pacific proposed to add new anti-competitive and discriminatory provisions

to the tariff, which prompted OpTel and other interested parties to file protests. Following the filing of these protests, Pacific has advised OpTel that it will not comply with any of complainants' requests for reconfiguration of demarcation points at MDU properties until its proposed tariff provisions are approved or unless ordered to do so by the Commission, which complainants are informed and believe would not occur on a timely basis absent the filing of this complaint and the accompanying motion for preliminary injunctive relief.

28. The defendants' respective failures to accommodate complainants' requests for reconfigurations of their demarcation points have effectively prevented TVMAX and OpTel from establishing service to numerous MDU properties, including each of the properties listed on Exhibits A and B. As a result, in some cases, TVMAX has been required to pay liquidated damages and, in other cases, is threatened with the expiration of its rights.

29. The defendants have caused and are continuing to cause irreparable harm to TVMAX's and OpTel's reputations and good will and are preventing OpTel from providing its services. Moreover, the defendants have placed and are continuing to place Sommerville, Conzelman, and other property owners at competitive disadvantage by depriving them of the ability to offer residents and potential residents of their properties true alternatives for facilities-based telecommunications services and related services from OpTel and other CLCs desiring to serve MDU properties. In addition, the defendants have harmed and continue to harm the residents of such properties by effectively denying them the ability to enjoy the advantages of competition in the provision of telecommunications services promised by the Telecommunications Act of 1996, state law, and Commission policy.

VI. BASES FOR RELIEF

COUNT 1

Violations of Public Utilities Code § 453

30. Complainants incorporate herein by reference the allegations contained in paragraphs 1 through 29, above.

31. Complainants are informed and believe, and on this basis allege, that each of the defendants has relocated and made other modifications to points of demarcation at MDU complexes pursuant to requests by property owners.

32. By Decision No. 98-12-023 in C.98-02-020, the Commission held that Pacific's changing demarcation points for some MDU property owners but not for others is unreasonably discriminatory, in violation of Public Utilities Code § 453.

33. The defendants' failures and refusals to establish single demarcation points pursuant to complainants' requests, as alleged herein, are and will be unreasonably discriminatory, in willful violation of Public Utilities Code § 453.

34. Complainants have no adequate remedy at law for the injuries now being caused and that in the future will be caused by defendants' violations of Public Utilities Code § 453.

COUNT 2

Violations of 1992 Settlement Agreement and Related Tariffs

35. Complainants incorporate herein by reference the allegations contained in paragraphs 1 through 34, above.

36. Both defendants are signatory parties to the 1992 Settlement Agreement approved by the Commission in Decision No. 92-01-023, and the provisions of such settlement are now incorporated in the defendants' respective tariffs.

37. By Decision No. 98-12-023 in C.98-02-020, the Commission held that this 1992 Settlement Agreement requires utilities to effect changes to demarcation points on continuous properties if the property owners request such changes, so long as the property owners pay for the network cable and facilities required to effect the changes.

38. The properties for which complainants have requested changes to demarcation points are continuous properties, within the definition of the 1992 Settlement Agreement and the parallel provisions of defendants' tariffs.

39. The defendants' failures and refusals to establish single demarcation points pursuant to complainants' requests, as alleged herein, and their failures and refusals to establish changes to demarcation points that may be requested in the future, are or will be in willful violation of their obligations under the 1992 Settlement Agreement, Decision No. 92-01-023, and their tariffs.

40. Complainants have no adequate remedy at law for the injuries now being caused and that in the future will be caused by these violations.

COUNT 3

Violations of Public Utilities Code § 451

41. Complainants incorporate herein by reference the allegations contained in paragraphs 1 through 40, above.

42. Public Utilities Code § 451 provides, in pertinent part:

"Every public utility shall furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

"All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable."

43. The defendants' failures and refusals to establish single demarcation points pursuant to complainants' requests, as alleged herein, and their failures and refusals to comply with similar requests in the future, are and will unreasonably and unjustifiably interfere with the ability of MDU property owners and residents to obtain access to competitive telecommunications services and violate state and federal policies favoring and promoting competition, all in willful violation of Public Utilities Code § 451.

44. Complainants have no adequate remedy at law for the injuries now being caused and that in the future will be caused by defendants' violations of Public Utilities Code § 451.

VII. SCOPING MEMO

Complainants request that this complaint be designated an "Adjudicatory Proceeding." A hearing is not necessary as there are no disputed issues of material fact.

No public witness hearings are necessary. The specific issues that need to be addressed by the proceeding are: (1) whether the defendants' failures and refusals to modify demarcation points at MDU complexes pursuant to complainants' requests violate Public Utilities Code § 451, Public Utilities Code § 453, the 1992 Settlement Agreement, Decision No. 92-01-023, or their tariffs; and, (2) whether the Commission should order interim injunctive relief,

pursuant to a concurrently-filed motion by OpTel, pending completion of this proceeding, as well as permanent injunctive relief and reparations.

Proposed Schedule

Prehearing Conference: May 17, 1999

Consideration of Motion for Interim Injunctive Relief: May 17, 1999

Issuance of Decision on Motion for Interim Injunctive Relief: May 31, 1999

Filing of Motion for Summary Judgment: June 30, 1999

Submission: July 9, 1999

Administrative Law Judge decision: No later than 90 days after submission.

VIII. PRAYER FOR RELIEF

WHEREFORE, Complainants pray for relief as follows:

1. For an order that Pacific or GTEC, as applicable, change the demarcation points of continuous MDU properties, as requested by complainants, specifically including (without limitation) the properties owned by Sommerville and Conzelman and managed by SMC, within 90 days of receipt of the complainants' requests therefor.
2. For an order requiring that Pacific or GTEC, as applicable, pay reparations to TVMAX for the defendants' respective failures to timely complete the demarcation point changes for the properties listed in Exhibits A and B, in the form of refunds of, or credits against, any charges for completing such changes in amounts equal to the full amounts of such charges.
3. For an order requiring that Pacific or GTEC, as applicable, pay a penalty to TVMAX in the amount of \$1000 per day, per property, for each day beyond such 90 day period

that any such request for a demarcation change remains unmet, except to the extent any such delay is due to forces beyond Pacific's or GTEC's reasonable control.

4. For such other and further relief as the Commission may deem just and proper.

Respectfully submitted this 29th day of April, 1999 at San Francisco, California.

GOODIN, MACBRIDE, SQUERI,
RITCHIE & DAY, LLP

By: 
John L. Clark

Attorneys for Complainants

VERIFICATION

I, Michael Katzenstein, am an officer of OpTel (California) Telecom, Inc., one of the complainants herein, and am authorized to execute this verification on its behalf. The statements in the foregoing complaint are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed by me on the date shown below at Phoenix, Arizona.

Dated: April 28, 1999

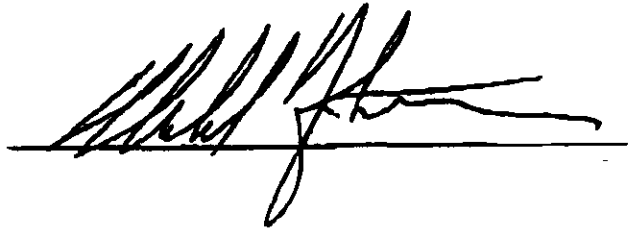
A handwritten signature in black ink, appearing to read "Michael Katzenstein", is written over a horizontal line.

EXHIBIT A

(SUBMITTED UNDER SEAL)

EXHIBIT B

(SUBMITTED UNDER SEAL)

CERTIFICATE OF SERVICE

I, Cynthia Addad, certify that I have on this 29th day of April, 1999, caused a copy of the foregoing **COMPLAINT** to be served on the persons shown on the attached list by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of April, 1999 at San Francisco, California.



Cynthia Addad

SERVICE LIST

Colleen M. O'Grady
Pacific Bell
140 New Montgomery Street, 15th Fl.
San Francisco, CA 94105

Pacific Bell
140 New Montgomery Street, Ste. 1819
San Francisco, CA 94105

James P. Tuthill
Legal Dept.
Pacific Bell
2600 Camino F n, Rm. 2W951
San Ramon, C. 4583

Margo Friedrich
Staff Manager
Regulatory & Governmental Affairs
GTE California Incorporated
711 Van Ness Avenue, Ste. 300
San Francisco, CA 94102

GTE California Incorporated
One GTE Place (RC3412)
Thousand Oaks, CA 91362

Attachment 2
(Letter from Pam O'Connell to Mark Buck)

Wholesale Local Markets

USWEST

July 15, 1999

Mark Buck
Optel
15795 N. 76th Street
Scottsdale, AZ 85260

Dear Mark:

On April 8th U S WEST sent you a letter outlining a proposal that would provide Optel access to residents at several multiple dwelling unit (MDU) properties in Arizona. The properties addressed in that request were:

Fiesta Park Apartments - 1033 S. Longmore, Mesa
Epernay Apartments - 944 West Main St., Mesa
Hidden Village Apartments - 8605 N. 59th Ave., Glendale
Quail Point Apartments - 3045 N. 67th Ave., Phoenix

Following are the quotes for the special construction required at each property. The quotes include the price of the retrofit cabinet and the RELTEC cabinet that will be placed on these properties; as well as labor and material costs associated with this work.

| | |
|---------------------------|-------------|
| Fiesta Park Apartments | \$39,774.23 |
| Epernay Apartments | 43,554.06 |
| Hidden Village Apartments | 37,554.99 |
| Quail Point Apartments | 8,639.05 |

Total: \$129,522.33

In addition, the monthly recurring lease rate for the intra-building cable is \$15.44 per loop; the nonrecurring installation charge for the intra-building cable is \$40.92.

Please call me at 303-965-9303 if you have any questions.

Sincerely,

Sam O'Connell

Sam O'Connell

Account Manager Wholesale Markets

Cc: Wanda O'Connor, General Mgr., Optel, Inc.
Wayne Spohn, General Mgr., U S West
Chris Rau, Senior Acct. Mgr., U S West

Attachment 3
(SBC "General Exchange Tariff")

President - Texas Division
Southwestern Bell Telephone Company
Dallas, Texas
Issued: June 29, 1994
Effective: July 19, 1994

GENERAL EXCHANGE TARIFF
Section: 23
Sheet: 25
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Replacing:

REGULATIONS APPLYING TO ALL CUSTOMERS' CONTRACTS

14. TERMS AND CONDITIONS FOR THE LOCATION OF DEMARCATION POINTS

(N)

14.1 Definition of Demarcation Point

14.1.1 The point of demarcation and/or interconnection between SWBT communications facilities and terminal equipment, protective apparatus or wiring at a subscriber's premises. SWBT-installed facilities at, or constituting, the demarcation point shall consist of wire or a jack conforming to Subpart F of Part 68 of the Commission's rules. "Premises" as used herein generally means a dwelling unit, other building or a legal unit of real property such as a lot on which a dwelling unit is located, as determined by SWBT's reasonable and nondiscriminatory standard operating practices. The "minimum point of entry" (MPOE) as used herein shall be either (1) the closest practicable point to where the wiring crosses a property line or (2) the closest practicable point to where the wiring enters a multiunit building or buildings. SWBT's reasonable and nondiscriminatory standard operating practices shall determine which of (1) or (2) shall apply. SWBT is not precluded from establishing reasonable classifications of multiunit premises for purposes of determining which of (1) or (2) above shall apply. Multiunit premises include, but are not limited to, residential, commercial, shopping center and campus situations.

(A) Single Unit Installations. For single unit installations existing as of June 9, 1994 and installations installed after that date the demarcation point shall be a point within twelve inches of the protector or, where there is no protector, within twelve inches of where the telephone wire enters the customer's premises.

(B) Multiunit Installations. (1) In multiunit premises existing as of June 9, 1994, the demarcation point shall be determined in accordance with SWBT's reasonable and nondiscriminatory standard operating practices. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point twelve inches from where the wiring enters the customer's premises.

(2) In multiunit premises in which wiring is installed after June 9, 1994, the multiunit premises owner shall determine the location of the demarcation point or points. The multiunit premises owner shall determine whether there shall be a single demarcation point location for all customers or separate such locations for each customer. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point twelve inches from where the wiring enters the customer's premises.

14.1.2 Relocation of Demarcation Point. SWBT has elected not to establish a practice of placing the demarcation point at the MPOE for multiunit premises. However, at the customer's request, SWBT will place the demarcation point at the MPOE for existing installations, and as appropriate, in new installations. SWBT will relocate multiple demarcation points to a single demarcation point at an MPOE in a manner that minimizes any resultant charges or other adverse impact to either building owners or customers.

14.1.3 If conforming to the twelve inch limitation is unrealistic or technically impossible, the demarcation point will be the most practicable MPOE.

(N)

President - Texas Division
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14. TERMS AND CONDITIONS FOR THE LOCATION OF DEMARCATION POINTS (Cont'd) (N)

14.2 Classification of Installations

14.2.1 Installations shall be classified as one of the following:

(A) Single unit installations are facility arrangements configured to accommodate a single customer. All other facility arrangements are classified as multiunit installations. Single unit installations include: single family dwellings; single business premises; and other single customer installations on one property, undivided by public thoroughfares (e.g., educational, industrial, governmental, or medical premises).

(B) Multiunit installations are facility arrangements configured for either more than one customer in a building or more than one premises on a legal unit of property. Multiunit installations include: multifamily residential apartments, condominiums, townhouses or duplexes; multitenant commercial, shopping center, and campus situations; and any other facility arrangement not classified as single unit.

14.2.2 With regard to premises for any structure that is built to be mobile (e.g., mobile homes and recreational vehicles), SWBT may place the demarcation point on a post or pole at or near the pad where such structure is intended to rest. Boat docks, boats, recreational vehicle parks, and similar premises may be treated by SWBT as single unit installations with a single demarcation point. For boat docks the demarcation point may be placed on shore. (N)

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REGULATIONS APPLYING TO ALL CUSTOMERS' CONTRACTS

14. TERMS AND CONDITIONS FOR THE LOCATION OF DEMARCATION POINTS (Cont'd) (N)

14.3 Location of Demarcation Points

14.3.1 In single unit installations and within individual units of a multiunit installation with multiple demarcation points, the demarcation point for all regulated services shall be a location on the customer's side and within twelve inches of the protector or, absent a protector, within twelve inches of the entry point to the customer's premises. If conforming to the twelve inches is unrealistic or technically impossible, the demarcation point shall be at the most practicable minimum point of entry.

14.3.2 The FCC has authorized, and the PUC has approved, that the demarcation point may be located at a point other than the minimum point of entry where it has already been established by the presence of network equipment as of June 9, 1994, and where neither the customer nor the premises owner requests that the equipment be relocated to the minimum point of entry. However, the demarcation point may be moved in accordance with paragraph 14.4, following.

14.3.3 For a multiunit installation, the property owner shall make the final decision on whether it shall have one demarcation point per customer premises or a single demarcation point for the entire building or campus.

14.3.4 Once an installation is arranged for a single demarcation point at the minimum point of entry, it will remain so configured for the life of the building or campus. For example, once a multiunit building has a single demarcation point established at a minimum point of entry, SWBT will not establish separate demarcation points within that building, except as otherwise authorized under SWBT's tariffs.

14.3.5 Buildings undergoing renovation requiring the complete removal of SWBT facilities will be considered new installations.

14.3.6 When a campus is intersected by a public thoroughfare, SWBT may (at the property owner's request) provide a demarcation point in each segment of the campus created by the intersection of the public thoroughfare.

14.3.7 The demarcation point will be placed at the customer's premises at a location which is accessible to both the customer and SWBT, provides the proper environment, and that is common to all services.

14.3.8 Diverse routing from a serving or alternate central office is provided under the Special Construction section of the Access Tariff. The alternate demarcation point for the diverse route shall meet the normal demarcation point requirements of 14.3.1 through 14.3.7 preceding.

14.3.9 Upon request, the demarcation point may be placed inside of a building or other structure, subject to applicable charges on a time and material basis. These charges will be based upon the work necessary to locate the demarcation point inside rather than outside the building or other structure, and will apply only when the demarcation point would have otherwise been located outside the building or other structure pursuant to SWBT's standard operating practices. (N)

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REGULATIONS APPLYING TO ALL CUSTOMERS' CONTRACTS

14. TERMS AND CONDITIONS FOR THE LOCATION OF DEMARCATION POINTS (Cont'd) (N)

14.4 Relocation of Demarcation Points

- 14.4.1 Relocations of network interfaces or demarcation points requested by the customer or property owner, other than as specified in the tariff, will be at the rates and conditions provided in the "Service Charges - Connections, Moves and Changes" section of the General Exchange Tariff. Charges to relocate demarcation points may apply in accordance with paragraph 14.7, following.
- 14.4.2 In multiunit installations built after June 9, 1994 where the property owner initially chooses multiple demarcation points, and later the same or subsequent owner requests the establishment of a single demarcation point for the building or campus, a charge will apply that is equal to the structural value of the stranded facilities on the property. Upon full payment of such charge, ownership of those facilities will pass to the property owner. Subsequent maintenance or removal of the facilities beyond the single demarcation point will be the responsibility of the property owner. An "allowed use" option (see para. 15) will be available to multiunit property owners at any time nine years after SWBT's last cable reinforcement in the building. The purchase requirement will not apply if a property owner requests "allowed use".
- 14.4.3 Upon unauthorized attachment to SWBT-owned facilities, a new demarcation point may be established in accordance with 5.6 of this tariff. However, SWBT will not establish a single demarcation point at the minimum point of entry if it is determined that an unauthorized attachment was inadvertent, and is subsequently removed.
- 14.4.4 When, as a condition of service, property owners impose unreasonable terms and conditions on SWBT's ability to: 1) terminate its services at a building; or 2) provide service to its customers within a building, SWBT, upon giving the property owner and all tenants six (6) months written notice, may establish a single demarcation point at the minimum point of entry at no cost to the property owner or tenants. All facilities on the property owner's side of the demarcation point will be subject to the "allowed use" provisions of paragraph 15.1, following.

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REGULATIONS APPLYING TO ALL CUSTOMERS' CONTRACTS

14. TERMS AND CONDITIONS FOR THE LOCATION OF DEMARCATION POINTS (Cont'd) (N)

14.4 Relocation of Demarcation Points (Cont'd)

14.4.5 In addition to the provisions of 14.4.4, SWBT shall relocate existing demarcation points to a single demarcation point at a minimum point of entry under any of the following conditions:

- (A) At the property owner's request;
- (B) When a customer or property owner attaches to SWBT-owned cable without authorization;
- (C) When SWBT facilities exhaust (i.e., when additional facilities must be placed to provide service);
- (D) When SWBT facilities expire (i.e., when facilities become uneconomical to maintain).

14.4.6 Condition (A) applies to both single and multiple unit installations. Condition (B) applies to single unit installations and to individual units of a multiple unit installation. Conditions (C) and (D) apply to single unit installations. Multiple unit installations may (but are not required to) establish a single demarcation point at a minimum point of entry under (C) or (D) above.

14.4.7 If SWBT otherwise determines through routine service order activity or customer premises work that a particular installation constitutes a single unit installation with one or more demarcation points not at the minimum point of entry, SWBT will initiate a contact with the customer or property owner to determine how and when SWBT will relocate the demarcation point to the minimum point of entry.

- (A) SWBT will allow the customer or building owner not more than twelve (12) months to prepare to assume use and control of SWBT facilities on the customer's or property owner's side of the minimum point of entry.
- (B) The customer or building owner may request that SWBT establish a single demarcation point at the minimum point of entry at any time during the 12 month period, provided SWBT is given at least thirty (30) days notice prior to the requested effective date of the single demarcation point. If network equipment must be relocated, SWBT must be provided at least ninety (90) days notice.
- (C) If the nature of the single unit installation changes prior to the establishment of a single demarcation point at the minimum point of entry, then the options available to the property owner will be determined by the status of the installation at the time the single demarcation point would otherwise have been established; e.g., if a single tenant building becomes a multitenant building before the single demarcation point is established, then the building owner will have all of the options available as are available to owners of other multiunit installations.

(N)

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REGULATIONS APPLYING TO ALL CUSTOMERS' CONTRACTS

14. TERMS AND CONDITIONS FOR THE LOCATION OF DEMARCATION POINTS (Cont'd)

(N)

14.5 Regulated Intra/Interbuilding Facilities

14.5.1 Additional facilities will be provisioned as required for regulated services to previously established demarcation points, to a maximum of one demarcation point per customer premises (normally at the minimum point of entry). No additional regulated facilities will be provided beyond the demarcation point located per 14.3, or relocated per 14.4, preceding.

14.5.2 Customer use of spare capacity in SWBT owned house, riser or interbuilding cable on their premises and on SWBT's side of the demarcation point(s) will be as specified in Section 2 of the Private Line Service Tariff.

14.6 Responsibilities of Customers

14.6.1 The customer shall provide necessary space for SWBT equipment and facilities installed on the customer's premises and without cost to SWBT so long as such equipment and facilities may be used or useful in providing any customer service. The customer shall also make necessary arrangements in order that SWBT will have access to such space at reasonable times for maintaining, testing, repairing, or removing SWBT services.

14.6.2 Customers and/or property owners are responsible for the operation, maintenance, repair, and replacement of cable and wire on the their side of the demarcation point. After the establishment of a demarcation point, SWBT will neither install, test, repair, nor remove cable on the customer side of the demarcation point, except on a nonregulated basis.

14.6.3 Customers and/or property owners are responsible for cable pressurization on the non-network side of the demarcation point. SWBT will not be responsible for pressurizing any cable for which customers and/or property owners have "allowed use" (see 15.1). In the event customers and/or property owners request the "allowed use" of a pressurized cable (and the cable otherwise satisfies the "allowed use" conditions of 15.3), then SWBT will seal the pressurization on the network side of the demarcation point.

(N)

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14. **TERMS AND CONDITIONS FOR THE LOCATION OF DEMARCATION POINTS** (Cont'd) (N)
- 14.7 **Application of Charges to Relocate Demarcation Points to the Minimum Point of Entry**
- 14.7.1 If the customer or building owner requests that a demarcation point or points be relocated to a single demarcation point at a minimum point of entry, or otherwise attaches to SWBT-installed cable on SWBT's side of an existing demarcation point:
- (A) A "make ready" charge will apply if SWBT must rearrange or install new cable facilities in order to establish the single demarcation point.
 - (B) The appropriate service charges or nonrecurring charges will apply if sufficient cross-connect facilities do not exist at or near the minimum point of entry or network equipment (if any) must be relocated to the minimum point of entry.
 - (C) Charges will not apply if sufficient cross-connect facilities exist at or near the minimum point of entry and network equipment (if any) is located at the minimum point of entry.
- 14.7.2 If SWBT facilities exhaust or expire within a single unit installation, SWBT will establish a single demarcation point at the minimum point of entry at no charge.
- 14.7.3 If SWBT facilities exhaust or expire within a multiple unit installation, SWBT will, upon notice to and acceptance by the property owner, establish a single demarcation point at the minimum point of entry at no charge. In the alternative, SWBT will maintain multiple demarcation points within the multiunit installation and reinforce or replace its facilities at no charge.
- 14.7.4 Unless otherwise requested by the customer or property owner, SWBT may continue to provide network equipment associated with designed services such as private line and special services. The demarcation point for such services existing as of June 9, 1994 shall not be moved so long as such network equipment remains in place and no additional designed services are installed that would require cable or facility additions. The demarcation point for such services shall be on the customer side of the network equipment. (N)

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15. CUSTOMER ACCESS TO THE TELEPHONE NETWORK

(N)

15.1 Allowed Use

- 15.1.1 Customers are allowed to connect, through direct attachment, simple customer premises wiring to SWBT-installed wiring at points up to and on the customer's side of the demarcation point. Complex premises wiring must be attached to the network through a SWBT-installed jack.
- 15.1.2 Customers are allowed to reconfigure, rearrange, and remove SWBT-installed wiring on the customer's side of the demarcation point. Customers may not attach to, or otherwise directly access, SWBT's protector.
- 15.1.3 Property owners are allowed to connect, through direct attachment, simple customer premises wiring to SWBT installed wiring at points up to and on the property owner's side of the demarcation point. Complex premises wiring must be attached to the network through a SWBT-installed jack.
- 15.1.4 Property owners are allowed to reconfigure, rearrange, and remove SWBT-installed wiring on the property owner's side of the demarcation point. Property owners may not attach to, or otherwise directly access, SWBT's protector.

15.2 Limitation of Liability

- 15.2.1 After a demarcation point is established at a minimum point of entry, SWBT-installed house and riser cable on the customer or property owner side of that demarcation point is subject to "allowed use" in accordance with 15.1.
- 15.2.2 SWBT shall in no way be liable for any harm, damage, service outage or degradation of service, whether intentional or inadvertent, as a result of customer, property owner, or other third-party access to or use of SWBT-installed house and riser cable on the customer or property owner side of a demarcation point. SWBT's liability, if any, for gross negligence or willful misconduct is not limited by this tariff.

(N)

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15. CUSTOMER ACCESS TO THE TELEPHONE NETWORK (Cont'd)

(N)

15.3 Conditions on Allowed Use

15.3.1 SWBT cable and facilities qualify for "allowed use" by a property owner in either single or multiunit installations if the following conditions are satisfied:

- (A) There are no other customers (other than those located in the multiunit installation subject to the allowed use) served by pairs in the same cable sheaths serving the property owner. (1)
- (B) There are no services within the cable sheath that require network equipment; however, an agreement by the property owner to pay for the relocation of the network equipment to a minimum point of entry will satisfy this condition.
- (C) There are no other cables in the same duct or buried along the same easement that the property owner wishes to use that cross rights-of-way to serve other SWBT customers. (See 15.3.2 regarding right-of-way.)
- (D) There are no other cables on the same pole that the property owner wishes to use that cross rights-of-way to serve other SWBT customers; however, the property owner's agreement to a pole attachment will satisfy this condition. (See 15.3.2 regarding right-of-way.)

(N)

- (1) SWBT recognizes sharing among state agencies and other political subdivisions as a single unit installation for demarcation purposes. Such sharing is subject to the Joint User provisions of this tariff. SWBT will recognize a multiunit installation consisting solely of state agencies (not other political subdivisions) as a single unit installation for demarcation purposes. Where facility rearrangements are necessary to establish a single demarcation point, SWBT will cooperate with the sharing state agencies and local political subdivisions to determine the lowest rearrangement costs.

(N)

(N)

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15. CUSTOMER ACCESS TO THE TELEPHONE NETWORK (Cont'd)

(N)

15.3 Conditions on Allowed Use (Cont'd)

- 15.3.2 As SWBT cannot transfer its right-of-way authority, the property owner must obtain the necessary right-of way from the appropriate authority under the circumstances in 15.3.1(C) and (D).
- 15.3.3 In the event of shared tenant service (STS) or other shared service arrangements pursuant to the Joint User provisions of this tariff in a multiunit installation, as a condition for "allowed use", the STS or other joint use provider agrees to allow tenants reasonable access to the facilities on the non-network side of the demarcation point as necessary to subscribe to service directly from SWBT.
- 15.3.4 SWBT cable and facilities that do not qualify for "allowed use" in either single or multiunit installations under the provisions of 15.3.1 will not be made available for "allowed use" and SWBT will continue to provide service to customers served by the cable and facilities. However, the property owner may request SWBT to rearrange its service and facilities to qualify them for "allowed use". The property owner will be responsible for all such costs.
- 15.3.5 New multiunit installations (i.e., those established after June 9, 1994) may elect to have the "allowed use" of SWBT installed cable and facilities at any time nine years after SWBT's latest cable reinforcement in that installation. "Allowed use" of SWBT-installed cable and facilities in new multiunit installations will not be available until that time.
- 15.3.6 Allowed use does not convert cable or SWBT-owned cable and facilities subject to allowed use. Cable and facilities subject to allowed use remain the property of SWBT. Cable and facilities subject to allowed use will not be retired until purchased or removed. SWBT-owned cable and facilities may be purchased in accordance with the provisions of paragraph 16.

(N)

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16. SALES AND REMOVALS OF SWBT-OWNED INTER/INTRA BUILDING CABLE

(N)

16.1 General

- 16.1.1 SWBT will offer for sale its in-place inter and intrabuilding cable to any premises owner who desires to purchase the cable in lieu of either providing their own, paying the tariff specified charges, or assuming control under "allowed use" (see 15.1). Premises owners who inquire about cable purchases will be apprised of their rights to freely access, attach to, rearrange, or remove any SWBT inter or intrabuilding cable on their side of the minimum point of entry.
- 16.1.2 On a given premises, only that portion of inter and intrabuilding cable which can be used exclusively by purchasers and their tenants, which is free of regulated network equipment, and which falls on the customer's or property owner's side of the minimum point of entry shall be subject to "allowed use" or offered for sale. Inter or intrabuilding cable which is necessary or useful for SWBT in its service to other customers or for services provided by SWBT, which is not free of all regulated network equipment, or which falls on SWBT's side of the minimum point of entry shall not be subject to "allowed use" nor offered for sale.
- 16.1.3 Cable and facilities that do not qualify for sale or "allowed use" as a result of the provisions of 16.1.2 may be rearranged pursuant to 15.3.4 in order to qualify the cable and facilities for sale or "allowed use".
- 16.1.4 Joint ownership of portions of plant (e.g., splitting ownership of pairs within a cable or terminal) will not be considered. SWBT easements and rights-of-way cannot be included as part of sale nor made available under "allowed use". Customers or property owners who assume control either by purchase or under "allowed use" must obtain approval for the necessary easements or rights-of-way from the appropriate authorities prior to the transfer of control (i.e., prior to execution of a contract of sale or establishment of a single demarcation point at a minimum point of entry).
- 16.1.5 Cable will be sold (or offered under "allowed use") as is, with neither express nor implied warranties. Upon assuming control (either under "allowed use" or by purchase), customers or property owners become responsible for maintenance and repair of the facilities; at facility exhaust, customers or property owners are responsible for providing new facilities at their own expense.
- 16.1.6 The inter and intrabuilding cable to be sold shall be sold at structural value. The inventory of plant to be sold will be determined based on the purchaser's requirements. Any cable which purchasers do not need will be removed or disabled.
- 16.1.7 SWBT will provide, at no additional charge, copies of only such cable records as may exist. Upon request, SWBT will develop additional records of SWBT-installed cable for customers or property owners as part of a sale or assumption of control under "allowed use". The requesting customer or property owner will be charged for the reasonable costs of producing such additional records.

(N)

Attachment 4
(Report on the Competitive Effects of Exclusive Contracting)